

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MATSUNOKI GROUP, INC., dba HAIKU
HOUSES,

Plaintiff,

v.

TIMBERWORK OREGON, INC.; TIMBERWORK,
INC.; JOAN L. SHUELL; EARL MAURY
BLONDHEIM; DON PAUL; ILENE ENGLISH-
PAUL and DOES 1 through 10,
inclusive,

Defendants.

No. C 08-04078 CW

ORDER GRANTING
MATSUNOKI'S MOTION
FOR RELIEF FROM
JUDGMENT

Matsunoki Group, Inc. moves for relief from judgment which was entered on the Court's Order granting Defendants' motion for summary judgment. Matsunoki argues that it presents "newly discovered evidence" concerning ownership of the copyrights at issue. Defendants oppose the motion. Having considered all of the papers filed by the parties the Court grants Matsunoki's motion.

BACKGROUND

On April 16, 2010, the Court granted Defendants summary judgment against Matsunoki on all of its claims, including the copyright claim. The parties disputed whether Matsunoki could prove ownership of the copyrights for the following seven publications: the 1989, 1994, 1996 and 1999 editions of Haiku Houses Country Houses of 16th Century Japan; the 1996 and 2001

1 editions of the Haiku Houses Buyer's Guide; and the Haiku Houses
2 Country Houses of 16th Century Japan website, first published in
3 1999. Matsunoki presented evidence that its predecessor Landmark
4 Architecture and Design owned the copyrights, but not that those
5 copyrights were transferred to Matsunoki. Landmark was
6 administratively dissolved as a corporation on November 6, 2006.
7 In its surreply in opposition to Defendants' motion, Matsunoki
8 represented that its president, Charla Honea, planned to take
9 future action to assign the copyrights to Matsunoki. In a
10 declaration signed on January 6, 2010, Honea stated that she would
11 apply to the Tennessee Secretary of State for reinstatement of
12 Landmark on January 7, 2010. Matsunoki argued that, once the
13 reinstatement became effective, Honea, as the president of
14 Landmark, would officially assign the copyrights to Matsunoki.

15 The Court concluded:

16 Applying for reinstatement is not the same thing as
17 being reinstated. Honea must satisfy the Tennessee
18 Secretary of State that Landmark has met the requirements
19 for reinstatement under Tennessee Code Annotated section 48-
20 24-203(a), which include obtaining "a certificate from the
21 commissioner of revenue reciting that the corporation has
22 properly filed all reports and paid all taxes and penalties
23 required by the revenue laws of this state." Honea has made
24 no showing that she has met these reinstatement
25 requirements. Because Matsunoki presents no evidence that
26 it currently owns the copyrights at issue, and it is not
27 clear when and if it will obtain those copyrights by
28 assignment, the Court concludes that Matsunoki cannot bring
any claims for copyright infringement. Therefore,
Matsunoki's copyright claims fail.

Order at 12.

Matsunoki now presents the following subsequent developments:
(1) on January 7, 2010, the Tennessee Secretary of State reinstated
Landmark as a corporation in good standing, Honea Decl. ¶ 2, Ex. A;

(2) on February 26, 2010, Landmark assigned in writing all of its intellectual property to Matsunoki. Matsunoki did not present any of this evidence to the Court before its April 16, 2010 Order on Defendants' motion for summary judgment.

DISCUSSION

I. Motion for Relief From Judgment

Federal Rule of Civil Procedure 60(b) provides that, "upon such terms as are just," a court may relieve a party from final judgment for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; (6) any other reason justifying relief from operation of the judgment.

Fed. R. Civ. P. 60(b). "Relief from judgment on the basis of newly discovered evidence is warranted if (1) the moving party can show the evidence relied on in fact constitutes "newly discovered evidence" within the meaning of Rule 60(b); (2) the moving party exercised due diligence to discover this evidence; and (3) the newly discovered evidence must be of 'such magnitude that production of it earlier would have been likely to change the disposition of the case.'" Feature Realty, Inc. v. City of Spokane, 331 F.3d 1082, 1093 (9th Cir. 2003) (quoting Coastal Transfer Co. v. Toyota Motor Sales, U.S.A., Inc., 833 F.2d 208, 211 (9th Cir. 1987)).

As noted above, evidence of Landmark's reinstatement and the assignment of its assets to Matsunoki was not provided to the Court

1 before the April 16, 2010 Order on Defendants' motion for summary
2 judgment. Matsunoki claims that it did not have the opportunity to
3 present this evidence to the Court after "the briefing had closed."
4 Motion at 6. Civil Local Rule 7-3(d) provides that "once a reply
5 is filed, no additional memoranda, papers or letters may be filed
6 without prior Court approval." This rule did not stop Matsunoki
7 from filing a motion for leave to file a surreply on January 6,
8 2010, or Defendants from filing a motion for leave to file a reply
9 to the surreply on January 12, 2010. With leave of court,
10 Matsunoki certainly could have filed documentation to support
11 further its claim of ownership of the copyrights in question.
12 Nevertheless, Matsunoki's failure to seek leave of court to file
13 these documents does not preclude granting relief under Rule 60(b).
14 At the time that Matsunoki filed its opposition and surreply, the
15 evidence that it seeks presently to put before the Court did not
16 exist. Once Matsunoki understood that there was an issue
17 concerning ownership of the copyrights, it took steps to establish
18 ownership. Evidence of those corrective steps constitute new
19 evidence under Rule 60(b)(2).

20 The Court next considers is whether the new evidence was of
21 such magnitude that it would have changed the outcome of the case.
22 Defendants claim that, even if Matsunoki can prove ownership of the
23 copyrights at issue, they made other arguments that would support
24 summary judgment on the copyright claim. Defendants had argued
25 that Matsunoki's copyright registration was not valid.

26 Copyright "registration made before or within five years after
27 first publication of the work shall constitute prima facie evidence
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1 of the validity of the copyright and of the facts stated in the
2 certificate." 17 U.S.C. § 410(c). The district court has
3 discretion regarding the weight to accord registrations made more
4 than five years after the first publication. Id.

5 Of the seven copyright registrations that Matsunoki claims to
6 own, only three were made within five years after the first
7 publication of the work -- the 1999 Catalog, the 2001 Builder's
8 Guide, and the Haiku Houses Country Houses of 16th Century Japan
9 website. Therefore, the remaining four are not presumptively
10 valid.

11 Defendants allege that these three more recent publications
12 are merely duplications of the earlier works and, therefore,
13 copyright registrations of them are not presumptively valid either.
14 After carefully reviewing these publications, the Court agrees.
15 The 1999 Catalog, the 2001 Builder's Guide and the website are
16 virtually identical to the 1996 Catalog. Therefore, none of
17 Matsunoki's copyright registrations are presumptively valid.

18 Defendants next argue that Matsunoki's copyrights are not
19 valid because Matsunoki did not accurately identify the author of
20 the works. Under federal law, copyright initially vests in a
21 work's author. 17 U.S.C. § 201(a). The copyright registration
22 forms for the 1989, 1994 and 1996 Catalogs and the 1996 and 2001
23 Builder's Guides state that Haiku Houses Limited is the author, and
24 the forms for the 1999 Catalog and website state that Landmark is
25 the author. Defendants argue that, because Charla Honea, the
26 president of Matsunoki, could not name the author of the works
27 during her deposition, the registration forms contain false
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1 authorship information. However, the evidence does not indicate
2 that Honea ever knew or had any way of knowing the author of the
3 works. Thus, her inability to recall authorship at the deposition
4 does not mean that the registration forms are inaccurate.

5 Defendants also assert that the seven registered copyrights
6 are invalid because they were obtained by fraud. An infringement
7 action is barred if a "claimant intended to defraud the Copyright
8 Office by making [a] misstatement." Urantia Found. v. Maaherra,
9 114 F.3d 955, 963 (9th Cir. 1997). However, "inadvertent mistakes
10 on registration certificates do not invalidate a copyright and thus
11 do not bar infringement actions." Id. Defendants assert that
12 Matsunoki purposely misrepresented the authorship of the copyrights
13 and the manner in which it obtained these copyrights. Even if
14 Defendants are correct that Matsunoki placed incorrect information
15 on the registration forms, they have not proved that Matsunoki
16 fraudulently misled the Copyright Office.

17 In sum, Defendants have not established alternative grounds to
18 grant summary judgment on Matsunoki's copyright claim. Therefore,
19 the new evidence regarding ownership of the copyrights would change
20 the outcome of the summary judgment motion. Accordingly, the Court
21 vacates the judgment in this case and allows Matsunoki to pursue
22 its copyright claim against Defendants.

23 CONCLUSION

24 For the foregoing reasons, the Court grants Defendants' motion
25 to set aside the judgment. Docket No. 137. The Court reopens the
26 case to allow Matsunoki to pursue its copyright claim against
27 Defendants. Because the judgment has been vacated, the Court
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denies without prejudice Defendants' motion for attorneys' fees.
Docket No. 122. The parties shall attend a further case management
conference on September 21, 2010 at 2:00 p.m.

IT IS SO ORDERED.

Dated: 09/03/10



CLAUDIA WILKEN
United States District Judge